

**13:**

**CRIMINAL:  
JUDGMENT**



# 1 Decision Making

When the evidence and the addresses, if any, have been completed, the Court shall record a conviction or acquittal on each count of the charge.

This decision is to be made by you alone. Although help as to meaning of the law can be sought from textbooks and legal counsel, the decision cannot be made by anyone other than by you.

## 1.1 Principles Governing Decision Making

There are three principles which collectively translate into the general duty to act fairly:

- You must act lawfully;
- Affected parties have a right to be heard;
- You must be free from bias.

The principles are intended to ensure:

- the fair, unbiased and equal treatment of all people; and
- the exercise of any discretion only on reasoned and justified grounds.

Adhering to these principles does not guarantee that the Court has made a good decision. It does mean, however, that the Court is likely to have followed a process that is designed to introduce many of the relevant and critical factors, and exclude prejudice and irrelevant material and considerations.

### **You Must Act Lawfully**

This principle is concerned with what the governing legislation or rules require.

There are several aspects to the principle of lawfulness:

- You must act within the authority of the law;
- You must take into account all the relevant considerations and must not take into account irrelevant considerations; and
- You must not give away your discretionary power.

Ask yourself:

- “Do I have jurisdiction to hear and determine the matter?”
- “What are the considerations I must take into account?”
  - Look to the appropriate legislation to work out what you must be satisfied of.

- ⇒ Each element of the offence will point to the relevant considerations. Factors unrelated to those elements will be irrelevant.
- “Have I taken into account anything irrelevant?”

### **Affected Parties Have a Right to be Heard**

Both the prosecution and defence must have a full and fair opportunity to be heard before the decision is made.

The purpose of this principle is to ensure that the Court considers all relevant information before making its decision.

Throughout the hearing process, ask yourself:

- “Am I giving each party a fair opportunity to state his or her case?”

### **You Must be Free From Bias**

You should not allow your decision to be affected by bias, prejudice or irrelevant considerations.

You must not have an interest in the matter from which it might be said you are biased.

- It is not necessary to show actual bias, the appearance of bias is sufficient.
- Bias might be inferred where there is a relationship to a party or witness, a strong personal attitude that will affect your decision, or a financial interest in the matter.

Ask yourself:

- “Is there any factor present which could amount to bias, or the perception of bias, if I hear this matter?”

### **Consequences of a Breach of the Principles**

If these principles are not adhered to, your decision may be reviewed on appeal.

There are other consequences of breaching the principles. These include:

- a person being unlawfully punished or a guilty person getting off without punishment;
- expense, hardship and emotional turmoil; and
- a loss of faith in the system of justice.

## 2 A Structured Approach to Making a Decision

Decision making is a process of applying the relevant law to the particular facts of the case.

You must not reach a conclusion before all the evidence and arguments have been heard. The way to do this is to employ a structured approach.

There are three tasks involved:

### 1. To Be Clear What the Court is Being Asked to Do

In criminal cases, be clear about what the accused is charged with and all the essential elements of the offence. For the accused to be found guilty, every element of the offence must be proved beyond reasonable doubt. The essential elements of a number of offences are outlined in Chapter 17 Common Offences. In all cases, however, you must refer to the applicable legislation.

### 2. To Determine What the Facts of the Case Are - What Happened, What Did Not Happen

In criminal cases, the accused is presumed to be innocent and the prosecution must prove that he or she is guilty. This is done by producing evidence.

To determine the facts, you will need to assess the credibility of the witnesses and the reliability of their evidence.

Credibility: “Is the evidence believable?” “Can it be believed?” “Is the witness being honest?”

Reliability: “Should I believe the witness?” “Is the evidence accurate?” “Could the witness be mistaken?” “How good is their memory of what happened?”

When considering oral evidence, take into account not only what has been said but also how it has been said. How you assess the demeanour of a witness can be a valuable aid in judging his or her credibility and reliability.

You may accept parts of the evidence of a witness and reject other parts.

A witness may be cross-examined for the sake of disproving their credibility.

Note that in a criminal case, if you accept the prosecution evidence, you must also reject the defence evidence on that matter. If there is a reasonable possibility that the defence evidence is true, and it relates to an essential element, there is reasonable doubt and the accused must be found not guilty.

### 3. To Make Your Decision

This is done by applying the law to the facts.

Only you can make the decision. Under no circumstances may the clerk or anyone else decide the matter.

## 3 Note Taking

You will have to decide between yourself and the clerk who will record the minutes of proceedings. If the clerk records the minutes, it is still advisable that you keep your own personal record to keep track of the evidence.

A suggestion is to note each element of the charge or note each issue on a separate sheet of paper. As the evidence is given, note it as it relates to each of these. This method can provide a helpful framework for your decision.

## 4 The Judgment

Unless otherwise provided by the *Criminal Procedure Code*, every criminal judgment, whether acquittal or conviction, must:

- be written by the presiding Magistrate in the language of the Court;
- contain the point or points for determination;
- contain the decision on each point and the reasons;
- be dated and signed by the presiding Magistrate in open Court at the time of pronouncing it: *s95(1) Criminal Procedure Code*.

In the case of an **acquittal**, the judgment must also:

- specify the offence of which the person is acquitted; and
- direct that the person shall be set at liberty as soon as possible, unless in custody for some other offence: *s95(3) Criminal Procedure Code*.

In the case of a **conviction**, the judgment must also specify:

- the provision of the *Penal Code* or other law under which the offender is convicted; and
- the punishment to which the offender has been sentenced: *s95(2) Criminal Procedure Code*.

The format at the end of this chapter is a useful format for making and delivering a criminal decision. This must be applied to each charge.

It is a good idea to have the 'losing' party in mind when giving your reasons. Make sure you address all their evidence and submissions thoroughly so they know they have been heard.

Remember that it is important to:

- consider all the evidence given and either accept it or reject it; and
- give reasons.

## 5 Delivering Your Judgment

For all criminal trials, you must pronounce the judgment or the substance of the judgment in open Court, either immediately after the trial or at some later time, with notice given to the parties and their lawyers: *s93(1) Criminal Procedure Code*.

If either the prosecution or defence request, you must read out the whole judgment, rather than just giving its substance: *s93(2) Criminal Procedure Code*.

In practice, it is a good idea to always read out the whole of the judgment each time so that there is no possibility of confusion or that two versions of your judgment are circulating.

If the accused is in custody, he or she must be brought before the Court when you deliver your judgment. If the accused is not in custody, the accused is required to attend for judgment, unless:

- personal attendance was not required during the trial or was dispensed with; and
- the verdict is acquittal or the sentence is a fine only: *s93(3) Criminal Procedure Code*.

No judgment is invalid merely because the party or his or her lawyer is absent when the judgment is given, or by failure to properly serve the notice of the date and time of the judgment: *s93(4) Criminal Procedure Code*.

If a right of appeal exists, you must:

- inform the accused of the right and the time for lodging the appeal;
- record on the record that you have told the accused of the right; and
- sign and date such: *s94 Criminal Procedure Code*.

If the accused applies, a copy of the judgment, if it is in written form, must be given to him or her without delay and free of cost: *s96 Criminal Procedure Code*.

## 6 Tips for Writing a Good Judgment

When writing a judgment, there are a number of points you should keep in mind to help you create the best judgment possible.

1. Think about your audience.
  - You are not only writing for the parties but for all others who may read the judgment. This includes the legal profession who are interested in knowing the law, the media who may be reporting on the case, Parliament who will be considering legislative changes, the public and other Magistrates and the Supreme Court.
2. Write your judgment as soon as possible after the conclusion of the trial as possible.
  - Try to write a first draft of your judgment while the evidence and issues are still fresh in your mind. You can then put this draft aside and rewrite it later for clarity and to check for any matters you may have missed the first time.
  - Writing judgments as soon as possible will also ensure that your workload does not become unmanageable as unwritten judgments pile up.
3. Stick to the issues.
  - Avoid *obiter dicta* and comments that are unnecessary to the determination of the issues.
4. Be clear in your writing.
  - Whenever possible, use short clear sentences without unnecessary legal jargon or archaic terminology.
  - Use short sentences.
  - Try to use the active voice. For example, write, “A assaulted B” rather than “B was assaulted by A”.
5. Include clear statements on evidentiary issues in the judgment.
  - Although you may internally remind yourself of certain evidentiary provisions, writing them in the judgment will ensure your decision is not appealed because it is unclear whether you acted in accordance with them.
6. Include highlights of counsel submissions.
  - This will let the lawyers know that you have taken their arguments into consideration and will help them and other lawyers better determine the state of the law.
7. When delivering your judgment orally, be dispassionate to show your neutrality.
  - Consider having a police officer present in Court if your judgment has the potential to cause disruption among the public present in Court or the parties.



## 7 Criminal Judgment Format

### 1. Introduction

- The first paragraph must say what the accused is charged with. Set the scene for the case.

### 2. Brief summary of the facts

- Set out the material facts of what is alleged by the prosecution.

### 3. The Law

- Onus and standard of proof. The prosecution has the burden of proving all elements of the offence beyond a reasonable doubt.
- Mention the relevant offence section and identify the elements of the offence.
- Mention any other relevant statutory provisions regarding evidence, etc.

### 4. Determining proven facts

- Identify facts that are accepted by the defence. Mention the elements that the accepted facts prove.
- Identify relevant facts in dispute. These are usually the issues (points for determination).
- Make rulings on facts in dispute and give reasons.
  - Which evidence you prefer and **why**. Questions of credibility and reliability must be dealt with here.

### 5. Apply the law to the facts

- Determine what aspects of the applicable law have been proved from the facts. Have all the elements been proved?

### 6. Conclusion

- What is the end result of the case? Conviction or acquittal?
- If convicted and a right of appeal exists, inform the accused of this right and the time for lodging the appeal, and record this.

### 7. Orders

- What orders, if any, must the Court make?
- Ensure you deal with any procedural orders such as costs, return of exhibits, etc.